

## **REMARKS/ARGUMENTS**

### **Amendments**

The claims are modified in the amendment. More specifically, claims 1, 9, 30, 31, and 34 have been amended, and no claims have been canceled. Claims 5, 14-20, 23, 24 and 26 were previously canceled. Therefore, claims 1-4, 6-13, 21, 22, 25 and 27-34 are present for examination. Applicants reserve the right to pursue any un-amended, canceled or withdrawn claims in a continuing application without any prejudicial effects. No new matter is added by these amendments. Applicants respectfully request reconsideration of this application as amended.

### **Interviews**

On August 31, 2009, the Examiner granted a telephonic interview to discuss the finality of the current Office Action, as indicated on the Office Action Summary page. It was noted that the Office Action is listed as non-final on the PAIR system. The Examiner agreed that the Office Action should be non-final. An in-person interview was granted on September 16, 2009. Applicant has presented the above amendments defining singlecast media in accordance to that interview to quickly further prosecution. Among other places, the application supports this definition on page 13, line 18 and page 2, lines 6-7. Granting of interviews is always appreciated.

### **35 U.S.C. §112 Rejections**

Claims 1, 9 and 31 were rejected under 35 U.S.C. §112, first paragraph, for allegedly being based on a disclosure which is not enabling. The Office Action stated that the terms "singlecast media" were not described in the specification. Applicants appreciate the Office's offer to withdraw this rejection with the above amendment as memorialized in the Interview Summary mailed September 21, 2009.

### **35 U.S.C. §103 Rejections**

The Office Action has rejected claims 1-4, 6-13, 21-22, 25 and 27-34 under 35 U.S.C. §103(a) as being unpatentable over the cited portions of U.S. Patent No. 6,990,676 to Proehl et al. (hereinafter "Proehl") in view of the cited portions of U.S. Patent No. 5,884,141 to Inoue (hereinafter "Inoue"). Applicants believe that major limitations from independent claims 1, 9, 30 and 31 as amended are not taught, alone or in combination, by Proehl or Inoue. More specifically, Proehl and Inoue do not teach or suggest receiving first and second portions of a media program wherein the first and second portions are received with different media types chosen from a group of types consisting of a multicast media or a singlecast media, as generally recited by independent claims 1, 9, 30 and 31. This argument was presented in the in-person interview to some persuasion.

***Missing Limitation: Receiving first and second portions of a program over different media***

The Office Action rejected these claims by stating that the missing limitation reads on the combination of references, since the linearly scheduled programming of Proehl meets multicast and the downloaded lead-in segment of Inoue meets singlecast. *Office Action*, at page 7, second paragraph. Applicants respectfully disagree.

Neither Proehl nor Inoue teaches or suggests singlecasting one portion of the program while multicasting another portion of the program. Proehl describes broadcasting of the programs only, using a digital satellite system (DSS). The method of Proehl includes "receiving a program when it is broadcasted over a satellite communication medium." *Proehl*, at Col., 2, ll. 52-54.

Similarly, Inoue describes that "[i]n a first mode of operation, a user enters a request into user interface 106 for the reception and display of a particular video program. ... Since each near video-on-demand channel consecutively rebroadcasts the program, the channel which is transmitting the hindmost segment of the program will usually be the next to commence another transmission of the requested program." *Inoue*, at Col. 5, ll. 20-33 (emphasis added). Broadcasting is multicasting, not singlecasting as required by the independent claims.

The Office Action does not cite portions of Inoue or Proehl that teach anything other than broadcasting the programs. Applicants respectfully submit that Proehl and Inoue do not teach or suggest, alone or in combination, receiving first and second portions of a media

program wherein the first and second portions are received with different media chosen from a group consisting of a multicast media or a singlecast media, as generally recited by independent claims 1, 9, 30 and 31.

Applicants respectfully submit that independent claims 1, 9, 30 and 31, and dependent claims 2-4, 6-8, 10-13, 21, 22, 24-29 and 32-34 that depend from the independent claims, are allowable at least because neither Proehl nor Inoue teach or suggest the missing limitation discussed above.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

/Thomas D. Franklin/

Thomas D. Franklin  
Reg. No. 43,616

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 303-571-4000  
Fax: 415-576-0300  
TDF:sjs  
62197527 v1